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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

TRUST PETITION NO.5 OF 2006

Sam Mankeshaw Mistry Petitioner

Mr.K.R.Zaiwala i/by Mr.Deepak Raut.

Mr.Ravi Kadam, Advocate General

CORAM : A.M.KHANWILKAR, J.

DATE : 08th August 2007

PC :

1. Heard counsel for the petitioner. Pursuant to the notice issued to the Advocate General, under order dated 7th August 2007, the Advocate General has appeared before the Court. In his opinion, the reliefs claimed by the petitioner in the present petition may be granted.

2. The petitioner is the great grand-son of the Testatrix Ratanbai Navroji Bharucha. The said Ratanbai Navroji Bharucha executed a will on 27th March 1918 creating trust in relation to the immovable property situate at Nizam Cross Lane and Bohra Street bearing City Survey No.3494 of

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Bhuleshwar Sub Division for the purposes of carrying out Baaj Rozgar ceremonies that is obsequious ceremonies for all times of the Testatrix and the deceased members of her family including her late husband and her parents. The Testatrix died on 14th April 1919. In terms of the will, Nasarwanji Rutomji was to act as an Executor. Accordingly, he discharged that obligation during his life time till 1928. After the death of original executor Nasarwanji Rustomji, his wife Ratanbai Nasarwanji looked after the trust properties. Later on, said Ratanbai Nasarwanji applied to this Court to discharge him from the said responsibility and to appoint some one else to manage the trust properties. That request was granted by this Court on 9th October 1942. Consequent to the order passed by this Court, three trustees were appointed to manage the affairs of the trust properties, namely, Maneckshaw Jehangirji Mistry, Goolbai Maneckshaw Mistry and Rustomji Ruttonji Painter. Out of them, the first two were father and mother of the petitioner and Rustomji Ruttonji Painter was the maternal uncle of the petitioner. Maneckshaw Jehangirji Mistry expired on 31st May 1965; whereas Goolbai Maneckshaw Mistry expired on 8th May 1971 and Rustomji

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Ruttonji Painter expired on 5th September 1960. Indeed, after the death of Goolbai Maneckshaw Mistry who was the last surviving trustee appointed by the Court, no formal application was made by the petitioner before this Court. Nevertheless, the record indicates that the petitioner continued with the management of the trust properties and to utilise the income derived from the properties for the purpose of carrying out stated expenses. The petitioner being the great grand-son of the Testatrix has so far managed the trust properties but due to passage of time, as the income from the trust properties was not sufficient and in spite of spending certain amounts of his own, the property could not be fully secured, inasmuch as certain portion of the property has now been encroached upon by unauthorised construction. In substance, the case made out in the petition is that the income of the trust property is not sufficient; besides the trust property is now in dilapidated condition. For all these reasons it is desirable that the trust property is disposed of. The petitioner has placed on record an offer made by one Mr.Alibhai dated 6th December 2005, in relation to the trust property to be purchased on "as is where is" basis for a consideration of

Rs.5.00 lakh (Rs.Five lakh only). However, the petitioner has not committed himself to that offer so far awaiting decision in the present petition; and the petitioner in all fairness has also placed on record the valuation of the trust property as has been assessed by M/s.Rusi Khambatta Associates made on 6th August 2007 at Rs.10 to 12 lakh. The petitioner, therefore, submits that if the petitioner's request for appointment as sole trustee in relation to the trust property be accepted and he may be allowed to sell the trust properties so that the sale proceeds can be deposited, income therefrom can be utilised for the desired purposes under the will.

3. Taking over all view of the matter and as there is nothing on record which militates against the petitioner, the petition is made absolute in terms of prayer clauses (a) to (c). Needless to observe that the petitioner will apply to the Court for formal confirmation of the sale before proceeding to execute the final documents in favour of third parties. Petition allowed on the above terms.

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(A.M.KHANWILKAR, J.)